

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

RSA No. 23 of 1996

Reserved on 11.6.2007

Date of decision 6.8.2007

Khazana Ram

Appellant

Versus

Smt. Prabha Devi

Respondent

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting?¹ No.

For the Appellant: Mr. Bimal Gupta, and Mr. Karan Singh,
Advocates.

For the Respondent: Mr. Bhupender Gupta, Senior Advocate, with
Mr. Praneet Gupta, Advocate.

Rajiv Sharma, J.

This Regular Second Appeal has been filed by the plaintiff-appellant against the judgments and decrees of the Courts below whereby the suit filed by the plaintiff was dismissed by the trial Court and the appeal filed by him was also dismissed by the learned Additional District Judge Solan vide judgment dated 7.12.1995 passed in Civil Appeal No. 19-k/13 of 1993.

Briefly stated the appellant-plaintiff hereinafter referred to as plaintiff had filed a civil suit in the court of Sub Judge 1st Class, Kandaghat District Solan on 16.9.1987, whereby a decree had been

¹ Whether reporter of local papers are allowed to see the judgment ? No.

sought by the plaintiff on the ground that he was possessing suit land since 1962-63 and possession of that land was delivered to him by deceased Geeta Ram. It was further averred in the plaint that he looked after deceased Geeta Ram and in lieu of services rendered to him; the deceased put the plaintiff under cultivation of the land in dispute. He further denied that the respondent was the daughter of deceased Geeta Ram. It was further averred that the document procured from the plaintiff by the husband of the respondent was without disclosing true facts and in a fraudulent manner. The said document was made under the belief that plaintiff was being made owner of the suit land. In the alternative the plaintiff averred that he had become owner of the suit land by way of adverse possession. The respondent controverted the averments made in the plaint by filing a written statement. She alleged that neither the suit land was owned by the plaintiff nor possession of the said land was ever delivered to the plaintiff by deceased Geeta Ram for the services rendered to him by the plaintiff nor the possession of the plaintiff over the suit land had perfected into title by way of adverse possession. The respondent further alleged that suit land had rightly been mutated in her favour as she being the daughter of deceased was the sole legal heir of deceased Geeta Ram. The trial court on the basis of the pleadings of the parties had framed the following issues:

1. Whether the plaintiff is in possession of the suit land since 1961-63 as put in possession by its owner Sh.Geeta Ram as alleged ? OPP .
2. Whether plaintiff in lieu of delivery of land serves its owner Shri Geeta Ram? OPP.
3. Whether plaintiff has perfected his title by adverse possession over the suit land? OPP
4. Whether plaintiff improved suit land as alleged? OPP

5. Whether defendant is daughter of late Sh.Geeta Ram? OPO
6. Whether affidavit by plaintiff in favour of defendant was executed by him of his own free will as alleged?
7. Whether document (affidavit) is result of fraud, misrepresentation as set out in para 5 of the plaint? OPP
8. Whether plaintiff has no locus standi to sue? OPD
9. Relief.

The trial court had given the following findings on the aforesaid issues:

Issue No.1 No

Issue No.2 No

Issue No.3 No

Issue No.4 No

Issue No.5 Yes

Issue No.6 No

Issue No.7 No.

Issue No.8 No

Relief Suit dismissed as per operative portion of the judgment.

The trial court had dismissed the suit on 4.3.1993. The plaintiff feeling aggrieved by the judgment and decree dated 4.3.1993 had preferred an appeal in the court of learned Additional District Judge, Solan on 20.4.1993. The learned Addl. District Judge had framed the following points for consideration:

Point No.1 Whether the findings of the lower court below are justifiable under the law and on the face of the material brought on record by the parties?

Point No.2 Final order.

The learned Additional District Judge had recorded the following findings:-

Point No.1 Yes.

Final order The appeal dismissed as per operative portion of the judgment

The appeal was dismissed by the learned Additional District Judge, Solan on 7.12.1995.

The second appeal was admitted on the following substantial questions of law:-

1. Whether the learned 'courts below were right in not taking the adverse inference against the respondent for not producing the affidavit on the basis of which Issues No.6 and No.7 were framed?
2. Whether the courts below have misconstrued, misinterpreted the pleadings and evidence on record and the view taken by the courts below is not possible on the basis of material on record?
3. Whether from the pleadings and evidence led by the parties, plea of adverse possession not proved on record?

Since all these questions being inter-connected, are taken up together.

Mr. Bimal Gupta, learned counsel for the appellant had strenuously argued that both the courts below have not appreciated the oral and documentary evidence in its right perspective and thus the judgment and decree of the Additional District Judge dated 7.12.1995 is liable to be set aside. On the other hand, Mr. Bhupender Gupta, learned senior counsel for the respondent had supported the judgment and decree passed by the learned appellate court below.

I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

The plaintiff had claimed himself to be the owner in possession of the property since 1961-62 on the basis of rendering services to Sh. Geeta Ram the Original owner. The respondent is daughter of Geeta Ram. There are no entries made in the Jamabandi reflecting the ownership of the plaintiff. In the

jamabandi for the year 1986-87 the total land measuring 20-15 bighas is recorded in the, ownership and possession of respondent Smt. Prabha Devi. DW-2 Bali Ram had testified that the respondent is the real daughter of Geeta Ram. DW-3 Pat Ram and DW-4 Puran Chand had deposed that the plaintiff was never in possession of the suit land. The plea set up by the plaintiff before the courts below that he had become owner of the land by way of adverse possession is also untenable. The plaintiff had set up a case that he came in possession of the land on the basis of services rendered by him to Geeta Ram. He had not proved any of the basic ingredients of adverse possession before the trial court and the appellate court. Thus both the courts below on the basis of evidence both oral and documentary have come to the just conclusion that the plaintiff had never become owner of the land in question. The revenue entries always remained in favour of the respondent who is the daughter of Geeta Ram. The plea of adverse possession though taken was not proved.

The upshot of the above discussion is that the appellant has failed to prove that he has become owner of the suit land by way of adverse possession. This Court will not interfere in the findings of fact recorded by the courts below. There is no question of law much less to say substantial question of law involved in the second appeal.

As a result, the appeal is dismissed with no order as to costs.

August 6 ,2007(g)

(Rajiv Sharma), J.